

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #00-09**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of the sales tax to the production of videotapes.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling, and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[TAXPAYER] is a Tennessee corporation. It operates in a facility that has approximately [NUMBER] square feet. The facility includes a studio with about [NUMBER] square feet. The studio is a large open room with cameras, lights, switching equipment, sets (such as a fake kitchen and a fake office) and other equipment used in the production of videotapes. The facility also includes an editing suite, a duplication facility, a warehouse,

and offices. The taxpayer currently has about ten full-time employees, and it hires other employees on a part-time or seasonal basis.

[TAXPAYER] creates the following types of original videotapes for a fee: commercials for television broadcast, programs for television broadcast, employee training tapes, and other original videotapes pursuant to customer orders. The taxpayer also performs other functions unrelated to this ruling request, such as presentation services and duplication services. [TAXPAYER] does not function as an ad agency. In contrast, ad agencies are sometimes its customers for the purpose of creating original videotapes of commercials.

QUESTION

Does Tennessee impose the sales tax upon fees charged by the taxpayer for its production of original videotapes?

RULING

No. The sales tax does not apply to the fees charged by the taxpayer for its production of original videotapes of television commercials, television programs, employee training videotapes, or other master videotapes. The taxpayer's purchases of tangible personal property that are used in the production of original videotapes are subject to the sales (or use) tax.

ANALYSIS

The following rule provides the basis for analyzing this issue:

- (1) Recording studios, engaged in the business of making original sound recordings onto tapes or discs, are deemed to be engaged primarily in rendering personal services which are not subject to the sales tax. In addition, persons engaged in the business of mastering such original tapes are also rendering a personal service not subject to the tax.
- (2) Television studios engaged in the business of recording commercials or other programming onto video tapes or film are deemed to be engaged primarily in rendering personal services which are not subject to the sales tax.
- (3) Sales to recording studios, to persons engaged in the mastering business, or to television studios of tangible personal property, such as supplies, cameras, recording equipment, mastering equipment, magnetic tape, video tape, etc., for use or consumption by such persons in connection with the recording of their services are subject to the Sales or Use Tax. Tenn. Comp. R. & Regs. 1320-5-1-1.13.

The taxpayer functions in the same capacity as a television studio (for the purpose of this rule) regarding the fees it charges for its production of original videotapes of television commercials, television programs, employee training videotapes, and other master videotapes. The sales tax exemption quoted above applies to such fees, because the rule

deems them to be fees for personal services that are not subject to the sales tax. The taxpayer does not qualify for this exemption regarding the other functions of its business.

The taxpayer's purchases of tangible personal property that are used in the production of original videotapes are subject to the sales or use tax.

Steve Butler
Tax Counsel

APPROVED: Ruth E. Johnson
Commissioner of Revenue

DATE: 4/4/00